

R E M A R K S

All amendments and cancellation of claims are made without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG),¹ and without waiving the right to prosecute the cancelled claims (or similar claims) in the future.

In the Office Action issued 9/6/07, the Examiner issued several rejections. Each of the rejections is discussed in detail below:

I. The Claims Do Not Contain New Matter

The Examiner rejects Claims 26-27 under 35 U.S.C. 112, first paragraph, as allegedly containing new matter. In particular, the Examiner states "Claim 26, as amended, includes the added limitation: 'under conditions such that said subject's survival is increased'. However, there appears to be no descriptive support in the specification, as originally filed, for this added limitation." and "The specification as filed provides descriptive support for said subject's survival being 'prolonged'." (Office Action, pg. 3). The Applicants respectfully disagree. Nonetheless, in order to further the business interests of the Applicants, and without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG), and without waiving the right to prosecute the cancelled claims (or similar claims) in the future, the Applicants have amended Claim 26 to recite "wherein said subject's survival is prolonged. The Examiner has indicated that the specification provides disclosure of such embodiments. Further support for this amendment is provided in Figure 5. As such, the Applicants submit that the claims do not comprise new matter and respectfully request that the rejection be withdrawn.

II. The Claims are not Indefinite

The Examiner rejects Claims 26-27 under 35 U.S.C. 112, second paragraph, as allegedly being indefinite. In particular, the Examiner states "Claim 26 is vague, indefinite, and confusing in the limitation 'under conditions such that said subject's survival is increased'." (Office

¹ 65 Fed. Reg. 54603 (Sept., 8, 2000).

Action, pg. 4). The Applicants respectfully disagree with the rejection. As described above, the claims have been amended to recite “under conditions such that said subject’s survival is prolonged.” As such, the Applicants submit that the claims are clear.

III. The Claims are Not Obvious

The Examiner rejects Claims 26-27 under 35 U.S.C. 103 as allegedly being obvious in light of Huber-Lang et al. (FASEB J., 1/19/2001; hereinafter Huber-Lang); Riedemann et al. (J. Clin. Invest. 110:101 (2002); hereinafter Riedemann) in view of Werfel et al. (J. Immunol. 157:1729 (1996); hereinafter Werfel) or Rothermel et al. (Scand. J. Immunol. 52:401 (2000); hereinafter Rothermel) and Behnke et al. (U.S. 5,573,921; hereinafter Behnke). The Examiner states “Instant claims are granted the effective filing date of the instant application, and therefore Riedemann et al. qualifies as prior art...” (Office Action, pg. 4). The Applicants respectfully disagree and note that the presently claimed invention does not contain new matter and is entitled to filing date of 11/5/02. Thus, as indicated in applicants’ prior communication, the Reidemann reference is a publication of the Applicants own work published within the year before the filing date of the present invention, and therefore, is not prior art.

Neither Huber-Lang, Rothermel, Behnke nor Werfel, alone or in combination, teach all of the elements of the presently claimed invention as required for a prima facie case of obviousness under 35 U.S.C. 103. In particular, neither Huber-Lang, Werfel, Behnke nor Rothermel, alone or in combination, teach a method of treating sepsis under conditions such that said subjects survival is prolonged. As such, the Applicants respectfully submit that the Examiner has not demonstrated a prima facie case of obviousness and respectfully request that the rejection be withdrawn.

CONCLUSION

A telephone interview was conducted between Examiner Devi and the undersigned on 11/27/07. During the interview, Examiner Devi suggested claim amendments (reflected above) that would overcome the existing rejections under 35 U.S.C. 112 and 103.

If a telephone interview would aid in the prosecution of this application, the Examiner is encouraged to call the undersigned collect at (618) 218-6900.

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